



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF WATER POLLUTION CONTROL
401 Church Street
L&C Annex 6th Floor
Nashville, TN 37243-1534

April 23, 2008

Ms. Susan Benz Watson, Registered Agent
201 Parker Sain Road
Bell Buckle, Tennessee 37020

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #7099 3400 0014 0970 4933

Subject: DIRECTOR'S ORDER NO. WPC08-0047
PARKER SAIN ROAD
BEDFORD COUNTY, TENNESSEE

Dear Ms. Benz-Watson:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager
Enforcement and Compliance Section

PNP:BPB

cc: DWPC – EFO-Columbia
DWPC – Compliance File
OGC

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:

BENZ PROPERTIES, LLC

RESPONDENT

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**DIVISION OF WATER
POLLUTION CONTROL**

CASE NUMBER WPC08-0047

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

II.

Benz Properties, LLC (hereinafter the "Respondent") is an active limited liability company licensed to conduct business in the State of Tennessee and is conducting excavation activities at Parker Sain Road, in Bedford County (hereinafter "the site"). Service of process may be made on the Respondent through its Registered Agent, Susan Benz Watson, at 201 Parker Sain Road, Bell Buckle, Tennessee 37020.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the “Act”) has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. §69-3-103(20) and as herein described, the Respondent has violated the Act.

V.

Tennessee Code Annotated §69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (TNCGP) may be obtained by submittal of a Notice of Intent (NOI), site-specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VI.

The unnamed tributary to Wartrace Creek, referred to herein, is “waters of the state” as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

FACTS

VII.

On June 15, 2006, division personnel from the Columbia Environmental Field Office (CL-EFO) conducted a complaint investigation at the site. Division personnel noted that the Respondent had been conducting excavation activities in an area near an unnamed tributary to Wartrace Creek, and that approximately 60 feet of the stream bank had been disturbed. The Respondent was on-site at the time of the investigation and was instructed to stabilize all areas disturbed by the excavation activities. During discussions with division personnel, the Respondent stated that the excavated materials were being sold off site.

VIII.

On June 21, 2006, the division issued a Notice of Violation (NOV) to the Respondent for violations observed during the June 15, 2006, complaint investigation.

IX.

On December 17, 2007, division personnel and personnel from the Division of Solid Waste Management conducted a complaint investigation at the site. It was observed that further excavation activities had been conducted at the site resulting in greater than one acre of land disturbance. Division personnel further observed that excavated materials had been placed where they could enter waters of the state and that no EPSC measures had been installed at the site.

X.

On December 18, 2007, the division issued a NOV to the Respondent for violations noted during the December 17, 2007, complaint investigation. The Respondent was instructed to stabilize the site and to restore the stream banks. The division conducted a subsequent file review and determined that the Respondent had not applied for, nor been granted coverage under the TNCGP. The Respondent was further instructed to apply for coverage under the TNCGP before engaging in any further land disturbance activities.

XI.

On January 8, 2008, division personnel met the Respondent at the site to discuss the violations noted in the December 18, 2007, NOV. Division personnel observed that further excavation activities had been conducted at the site since the December 17, 2007, complaint investigation and that excavated materials had again been placed where they could enter waters of the state. The Respondent was again instructed to stabilize the site and was informed of the need to obtain TNCGP coverage prior to conducting any further land disturbance activities at the site.

XII.

On January 28, 2008, division personnel conducted a follow-up site inspection and met the Respondent at the site. Division personnel noted that the Respondent had conducted additional excavation activities at the site. Division personnel further noted that the site had not been stabilized and that excavated materials had been placed where they could enter waters of the state. EPSC measures had not been installed as required. The Respondent was informed that if he continued to conduct land disturbance activities without permit coverage, a penalty may be assessed for each day of unauthorized activity. To date, the division has not received a NOI from the Respondent to obtain TNCGP coverage for land disturbance activities at the site.

XIII.

During the course of investigation, the division incurred damages in the amount of NINE HUNDRED TEN DOLLARS AND FOUR CENTS (\$910.04).

VIOLATIONS

XIV.

By conducting land disturbance activities without TNCGP coverage, the Respondent has violated T.C.A. §§69-3-108(a)–(b), 114(b), which state in part:

§69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

ORDER AND ASSESSMENT

XV.

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondent.

1. The Respondent shall immediately establish effective EPSC measures on-site, such that no sediment is allowed to enter waters of the state.
2. The Respondent shall, within 14 days of receipt of this Order, submit written documentation and photographic evidence indicating that appropriate EPSC measures are

in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager in the CL-EFO at 2484 Park Plus Drive, Columbia, Tennessee 38401.

3. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. The Respondent shall, within 14 days of receipt of this Order, submit a completed application for Coverage under the TNCGP including a NOI, SWPPP, and appropriate fee to the Water Pollution Control Manager in the CL-EFO at the address listed in item 2, above. If no additional land disturbance activities are planned to occur at the site, then the Respondent shall submit a signed written statement to that effect in lieu of a NOI, SWPPP, and appropriate fee.
5. The Respondent shall pay a CIVIL PENALTY of TWENTY THREE THOUSAND FIVE HUNDRED DOLLARS (\$23,500.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of SIX THOUSAND DOLLARS (\$6,000.00).
 - b. If the Respondent fails to comply with Part XV, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
 - c. If the Respondent fails to comply with Part XV, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3,750.00), payable within 30 days of default.

- d. If the Respondent fails to comply with Part XV, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$3,750.00), payable within 30 days of default.
 - e. If the Respondent fails to comply with Part XV, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of default.
6. The Respondent shall pay DAMAGES to the division in the amount of NINE HUNDRED TEN DOLLARS AND FOUR CENTS (\$910.04) payable within 30 days of receipt of this Order and Assessment.

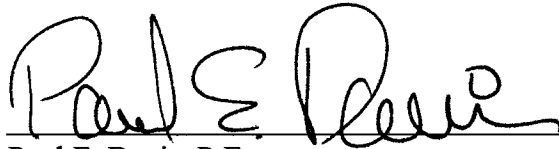
The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director may, for good cause shown, extend the compliance dates contained within this Order. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing Order is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However,

compliance with the Order will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the commissioner of the Tennessee Department of Environment and Conservation on this 23RD day of April 2008.



Paul E. Davis, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§69-3-109, 115, allows any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L&C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within 30 days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§69-3-109 and 69-3115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C .A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services-Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. Please write your case number on all payments and all correspondence concerning this matter.